IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 1421 of 2006 (M/B)

1. M/s Kumaon Motor Owners Union Limited,
having its Head Office at Kathgodam,
District Nainital through its
Executive Director Sri Mahendra Singh Bisht
S/o Sri Prem Singh Bisht, R/o Kathgodam,
Nainital.
2. Mahendra Singh Bisht, S/o Sri Prem Singh Bisht,
Executive Director,
M/s Kumaon Motor Owners Union Limited,
Kathgodam, District Nainital. …….. Petitioners

Versus

1. Regional Transport Authority,
Kumaon Region, Haldwani,
District Nainital.
2. Assistant Regional Transport Authority,
Enforcement, Kumaon Region at Haldwani,
District Nainital.
3. Uttam Singh Chauhan S/o Sri Kanhaiya Singh Chauhan,
R/o Malla Kathgodam, District Nainital,
Owner of Vehicle No. UA04B-4605.
4. Manoj Patni S/o Sri K.C. Patni,
R/o Tulsi Nagar, Bhotiya Parav,
Haldwani, District Nainital,
Owner of Vehicle No. UA04-5135.
5. Rajesh Bhatt S/o Sri Lakshmi Dutt Bhatt,
R/o Bhatt Colony, Nawabi Road, Haldwani,
Owner of Vehicle No. UA04A-5761. ..…. Respondents

Mr. S.K. Posti, Advocate for the petitioners.
Mr. Subhash Upadhyay, Brief Holder for respondents nos. 1 & 2.
None for respondent no. 3.
Mr. Sudhir Singh, Advocate for respondents nos. 4 & 5.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C. J. (Oral)

Mr. S.K. Posti, Advocate for the petitioners.

Mr. Subhash Upadhyay, Brief Holder for respondents nos. 1 & 2.

None for respondent no. 3.

Mr. Sudhir Singh, Advocate for respondents nos. 4 & 5.

They are heard.

2. Petitioners M/s Kumaon Motor Owners Union Limited and its Executive Director Mahendra Singh Bisht have filed this writ petition for the following reliefs:

> "(i) Issue a writ, order or direction in the nature of mandamus directing the respondent nos. 1 and 2 to take appropriate action against the respondent nos. 3 to 5 and other vehicle owners which are being plied in violation of the permit conditions.
>
> (ii) Issue a writ, order or direction in the nature of mandamus directing the respondent nos. 1 and 2 to cancel the permit of those vehicles which are being plied in violation of the permit conditions.
>
> (iii) Issue any other writ, order or direction which this Hon'ble court may deem fit and proper in the facts and circumstances of the case.
>
> (iv) Award the cost of the petition in favour of the petitioner."

3. The petitioners, in substance, are seeking a direction to respondents nos. 1 & 2 to take appropriate action against respondents nos. 3 to 5, who are Members of the petitioner Union.

4. In the counter affidavit filed on behalf of respondent no. 1 – Regional Transport Authority, Kumaon Region, Haldwani, District Nainital and respondent no.2 – Assistant Regional Transport Authority, Enforcement, Kumaon Region at Haldwani, District Nainital, serious allegations have been made against petitioner Union in paras 3-B to 3-J, which read as follows:

> "3-B. That the petitioners' union every now and then lodged the complaints to the respondent no. 1 about operation of buses belonging to then union on only one profitable route. In its meeting held on 5.8.2000 the Regional Transport Authority, Kumaon suspended the permits of the following buses for one month, which were compounded on Rs. 5000/- each in lieu of suspension.

(1) UGP-4104 (2) UP03-0185 (3) UP03-8507 and
(4) UP01-2427.

C. That later on the petitioners' union made another complaint that the following number of buses were operating on a singly route out of their union:-

D. That for action against these miscreant bus operators under Section 86 of the Motor Vehicle Act, 1988, the matter was placed before the R.T.A. in its meeting held on 30.7.2003. After due consideration it was resolved that there should be spot checking of these buses and if found plying in violation of said permit condition they must be challanced and the cases be put up before the ensuing meeting. But later on, the petitioners have nothing to complain about these buses and it appeared that the buses against whom the impugned complaints were made might have come back in main stream.

E. That it is to be added that the Passenger Tax Officer on 8.12.2006 challaned following vehicle which were found committing the mentioned offences:-

BUS No. UA04-5135 of respondent no. 4 was found plying on a singly route, Almora-Haldwani and likewise Bus No. UA04-5761 of respondent 6 was found plying on a singly route Mukteshwar-Haldwani. Appropriate action is being taken under Section-86 of the Motor Vehicle Act against the permits of these offenders.

F. That this is pertinent to mention here that the nationalization scheme of the route Ranibagh-Bhimtal-Nakuchiatal by the State of U.P. on 27.8.1993 was modified to the extent that only two up and two down services had been allowed to private buses for exclusive operation on the portion of the route Ranibagh-Bhimtal. But respondent no. 2 on 11.2.2004 checked and challaned following vehicles operating in violation of nationalization scheme of the route:-

(1) UP02C-2156 (2) UA04-2174 (3) UP03-1274
(4) UP03-4756 (5) UP02C-3194 (6) UP02C-2454
(7) UP01-2427 (8) UP03-0996 (9) UA04-7862
(10) UP01-3800 (11) UP27-5256 and
(12) UP03-2848

G. That these case were placed before the Regional Transport Authority, Kumaon in its meeting held on 21.6.2004, which resolved to suspend the permits of individual buses for a period of one month

and in lieu of suspension were compounded in respect of each for Rs. 5000/-.

H. That in the past as well Assistant Regional Transport Officer (Enforcement), Haldwani, checked and challaned the following buses on 15.2.2001 in commission of the said offence-

(1) Bus No. UP 02 D 0004 was found plying on nationalized route Bhimtal-Ranibagh and challaned. It was detected that this bus was proceedings from Bageshwar to Haldwani.

(2) Bus No. UP 03-0897 – It was found plying on the same notified route Bhimtal-Ranibagh hill proceeding from Haldwani to Babiyar.

(3) Bus No. UP 02C-0151 – Found plying on Bhimtal-Ranibagh notified route.

(4) UP 02B 2447 – Found plying on notified route Bhimtal-Ranibagh.

I. That in all of the above cases the petitioners' union submitted an undertaking that the challaned buses were plying in accordance to the time table of the union and this did not violate the permit condition. The cases were compounded on the basis of undertaking of company. From all these cases, it appears that the petitioners themselves allows the buses plying under its management to violate the permit route conditions on several occasion.

J. That it appears that whenever some of the bus owners evade payment of commission to the petitioners union, then to compel such owners for recovering their dues the petitioners attempts to utilize the Government machinery by making the complaints that the owners concerned are operating their buses in violation of permit conditions. Going even further the union resorted to file the writ petition before the Hon'ble Court. But as soon as payment of outstanding dues of their union is made by the bus owner the petitioners inform that there is nothing adverse against the owner concerned. For example, in the past they complaint that bus no. UP 01-2427 was operating only on a singly route. But later on they informed to the Regional Transport Officer, Haldwani on 11.1.2007 that the owner has assured them to operate his bus in accordance to the permit conditions and has also paid the outstanding dues of commission to them in part and rest of the amount shall be paid in instalments."

5. From the above quoted paras of the counter affidavit filed on behalf of respondents nos. 1 & 2, we have no manner of doubt that the petitioners have not come to the Court with clean hands.

6. The writ petition, therefore, is liable to be dismissed on this short ground alone and is hereby dismissed accordingly.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**
03.05.2007 03.05.2007

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